

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)

Act 175 of 1927

CHAPTER XI

PROBATION

771.1 Requirements for probation; delayed sentence; fee; applicability of section to certain juveniles.

Sec. 1. (1) In all prosecutions for felonies, misdemeanors, or ordinance violations other than murder, treason, criminal sexual conduct in the first or third degree, armed robbery, or major controlled substance offenses, if the defendant has been found guilty upon verdict or plea and the court determines that the defendant is not likely again to engage in an offensive or criminal course of conduct and that the public good does not require that the defendant suffer the penalty imposed by law, the court may place the defendant on probation under the charge and supervision of a probation officer.

(2) In an action in which the court may place the defendant on probation, the court may delay sentencing the defendant for not more than 1 year to give the defendant an opportunity to prove to the court his or her eligibility for probation or other leniency compatible with the ends of justice and the defendant's rehabilitation, such as participation in a drug treatment court under chapter 10A of the revised judiciary act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082. When sentencing is delayed, the court shall enter an order stating the reason for the delay upon the court's records. The delay in passing sentence does not deprive the court of jurisdiction to sentence the defendant at any time during the period of delay.

(3) If a defendant is before the circuit court and the court delays imposing sentence under subsection (2), the court shall include in the delayed sentence order that the department of corrections shall collect a supervision fee of not more than \$135.00 multiplied by the number of months of delay ordered, but not more than 12 months. The fee is payable when the delayed sentence order is entered, but the fee may be paid in monthly installments if the court approves installment payments for that defendant. In determining the amount of the fee, the court shall consider the defendant's projected income and financial resources. The court shall use the following table of projected monthly income in determining the amount of the fee to be ordered:

<u>Projected Monthly Income</u>	<u>Amount of Fee</u>
\$ 0-249.99	\$ 0.00
\$ 250.00-499.99	\$ 10.00
\$ 500.00-749.99	\$ 25.00
\$ 750.00-999.99	\$ 40.00
\$ 1,000.00 or more	5% of projected monthly income, but not more \$135.00

The court may order a higher amount than indicated by the table, up to the maximum of \$135.00 multiplied by the number of months of delay ordered but not more than 12 months, if the court determines that the defendant has sufficient assets or other financial resources to warrant the higher amount. If the court orders a higher amount, the amount and the reasons for ordering that amount shall be stated in the court order. The fee shall be collected as provided in section 25a of the corrections code of 1953, 1953 PA 232, MCL 791.225a. A person shall not be subject to more than 1 supervision fee at the same time. If a supervision fee is ordered for a person for any month or months during which that person already is subject to a supervision fee, the court shall waive the fee having the shorter remaining duration.

(4) This section does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17371;—Am. 1931, Act 308, Eff. Sept. 18, 1931;—Am. 1945, Act 5, Eff. Sept. 6, 1945;—CL 1948, 771.1;—Am. 1961, Act 185, Eff. Sept. 8, 1961;—Am. 1978, Act 77, Eff. Sept. 1, 1978;—Am. 1982, Act 470, Eff. Mar. 30, 1983;—Am. 1988, Act 78, Eff. Oct. 1, 1988;—Am. 1988, Act 90, Imd. Eff. Mar. 30, 1988;—Am. 1993, Act 185, Eff. Oct. 1, 1993;—Am. 1998, Act 520, Imd. Eff. Jan. 12, 1999;—Am. 2002, Act 483, Eff. Oct. 1, 2002;—Am. 2002, Act 666, Eff. Mar. 1, 2003;—Am. 2004, Act 219, Eff. Jan. 1, 2005;—Am. 2006, Act 631, Imd. Eff. Jan. 3, 2007.

Former law: See section 1 of Act 105 of 1913, being CL 1915, § 2029.

771.2 Probation period; order fixing period and conditions of probation; registration pursuant to sex offenders registration act; reduction in probation period; subsection (1) inapplicable to certain juveniles.

Sec. 2. (1) Except as provided in section 2a of this chapter, if the defendant is convicted for an offense that is not a felony, the probation period shall not exceed 2 years. Except as provided in section 2a of this chapter, if the defendant is convicted of a felony, the probation period shall not exceed 5 years.

(2) The court shall by order, to be filed or entered in the cause as the court may direct by general rule or in each case, fix and determine the period and conditions of probation. The order is part of the record in the cause. The court may amend the order in form or substance at any time.

(3) A defendant who was placed on probation under section 1(4) of this chapter prior to the effective date of the act that amended this section is subject to the conditions of probation specified in section 3 of this chapter, including payment of a probation supervision fee as prescribed in section 3c of this chapter, and to revocation for violation of these conditions, but the probation period shall not be reduced other than by a revocation that results in imprisonment or as otherwise provided by law.

(4) If an individual is placed on probation for a listed offense enumerated in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722, the individual's probation officer shall register the individual or accept the individual's registration as provided in that act.

(5) Subsection (1) does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17372;—CL 1948, 771.2;—Am. 1978, Act 77, Eff. Sept. 1, 1978;—Am. 1988, Act 78, Eff. Oct. 1, 1988;—Am. 1992, Act 251, Eff. Jan. 1, 1993;—Am. 1993, Act 185, Eff. Oct. 1, 1993;—Am. 1994, Act 286, Eff. Oct. 1, 1995;—Am. 1998, Act 520, Imd. Eff. Jan. 12, 1999;—Am. 2002, Act 666, Eff. Mar. 1, 2003.

Compiler's note: Section 3 of Act 78 of 1988 provides: "This amendatory act shall take effect June 1, 1988." This section was amended by Act 181 of 1988 to read as follows: "This amendatory act shall take effect October 1, 1988."

Former law: See section 2 of Act 105 of 1913, being CL 1915, § 2030; and Act 203 of 1925.

771.2a Probation for not more than 5 years; probation for term of years; order fixing period and conditions of probation; applicability of section to certain juveniles; probation for not less than 5 years; conditions; residing or working within school safety zone; exemption; definitions.

Sec. 2a. (1) The court may place an individual convicted of violating section 411h of the Michigan penal code, 1931 PA 328, MCL 750.411h, on probation for not more than 5 years. The sentence is subject to the conditions of probation set forth in section 411h(3) of the Michigan penal code, 1931 PA 328, MCL 750.411h, and section 3 of this chapter. The probation is subject to revocation for any violation of a condition of that probation.

(2) The court may place an individual convicted of violating section 411i of the Michigan penal code, 1931 PA 328, MCL 750.411i, on probation for any term of years, but not less than 5 years. The sentence is subject to the conditions of probation set forth in section 411i(4) of the Michigan penal code, 1931 PA 328, MCL 750.411i, and section 3 of this chapter. The probation is subject to revocation for any violation of a condition of that probation.

(3) The court may place an individual convicted of a violation of section 136b of the Michigan penal code, 1931 PA 328, MCL 750.136b, that is designated as a misdemeanor on probation for not more than 5 years.

(4) The court shall by order, to be filed or entered in the cause as the court directs by general rule or in each case, fix and determine the period and conditions of probation. The order is part of the record in the cause. The court may amend the order in form or substance at any time.

(5) Subsections (1), (2), (3), and (4) do not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

(6) Except as otherwise provided by law, the court may place an individual convicted of a listed offense on probation subject to the requirements of this subsection and subsections (7) through (12) for any term of years but not less than 5 years.

(7) Except as otherwise provided in subsections (8) to (12), if an individual is placed on probation under subsection (6), the court shall order the individual not to do any of the following:

- (a) Reside within a student safety zone.
- (b) Work within a student safety zone.
- (c) Loiter within a student safety zone.

(8) The court shall not impose a condition of probation described in subsection (7)(a) if any of the following apply:

(a) The individual is not more than 19 years of age and attends secondary school or postsecondary school, and resides with his or her parent or guardian. However, an individual described in this subdivision shall be

ordered not to initiate or maintain contact with a minor within that student safety zone. The individual shall be permitted to initiate or maintain contact with a minor with whom he or she attends secondary school or postsecondary school in conjunction with that school attendance.

(b) The individual is not more than 26 years of age, attends a special education program, and resides with his or her parent or guardian or in a group home or assisted living facility. However, an individual described in this subdivision shall be ordered not to initiate or maintain contact with a minor within that student safety zone. The individual shall be permitted to initiate or maintain contact with a minor with whom he or she attends a special education program in conjunction with that attendance.

(c) The individual was residing within that student safety zone at the time the amendatory act that added this subdivision was enacted into law. However, if the individual was residing within the student safety zone at the time the amendatory act that added this subdivision was enacted into law, the court shall order the individual not to initiate or maintain contact with any minors within that student safety zone. This subdivision does not prohibit the court from allowing contact with any minors named in the probation order for good cause shown and as specified in the probation order.

(9) An order issued under subsection (7)(a) shall not prohibit an individual from being a patient in a hospital or hospice that is located within a student safety zone. However, this exception does not apply to an individual who initiates or maintains contact with a minor within that student safety zone.

(10) The court shall not impose a condition of probation described in subsection (7)(b) if the individual was working within the student safety zone at the time the amendatory act that added this subsection was enacted into law. However, if the individual was working within the student safety zone at the time the amendatory act that added this subsection was enacted into law, the court shall order the individual not to initiate or maintain contact with any minors in the course of his or her employment within that student safety zone. This subsection does not prohibit the court from allowing contact with any minors named in the probation order for good cause shown and as specified in the probation order.

(11) The court shall not impose a condition of probation described in subsection (7)(b) if the individual only intermittently or sporadically enters a student safety zone for purposes of work. If the individual intermittently or sporadically works within a student safety zone, the court shall order the individual not to initiate or maintain contact with any minors in the course of his or her employment within that safety zone. This subsection does not prohibit the court from allowing contact with any minors named in the probation order for good cause shown and as specified in the probation order.

(12) The court may exempt an individual from probation under subsection (6) if any of the following apply:

(a) The individual has successfully completed his or her probationary period under sections 11 to 15 of chapter II for committing a listed offense and has been discharged from youthful trainee status.

(b) The individual was convicted of committing or attempting to commit a violation solely described in section 520e(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520e, and at the time of the violation was 17 years of age or older but less than 21 years of age and is not more than 5 years older than the victim.

(13) As used in this section:

(a) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(b) "Loiter" means to remain for a period of time and under circumstances that a reasonable person would determine is for the primary purpose of observing or contacting minors.

(c) "Minor" means an individual less than 18 years of age.

(d) "School" means a public, private, denominational, or parochial school offering developmental kindergarten, kindergarten, or any grade from 1 through 12. School does not include a home school.

(e) "School property" means a building, facility, structure, or real property owned, leased, or otherwise controlled by a school, other than a building, facility, structure, or real property that is no longer in use on a permanent or continuous basis, to which either of the following applies:

(i) It is used to impart educational instruction.

(ii) It is for use by students not more than 19 years of age for sports or other recreational activities.

(f) "Student safety zone" means the area that lies 1,000 feet or less from school property.

History: Add. 1992, Act 251, Eff. Jan. 1, 1993;—Am. 1998, Act 520, Imd. Eff. Jan. 12, 1999;—Am. 2005, Act 126, Eff. Jan. 1, 2006;—Am. 2006, Act 507, Imd. Eff. Dec. 29, 2006.

771.3 Probation; conditions; entry of order into LEIN; costs as part of sentence of probation; compliance as condition of probation; revocation of probation; fees in delayed or deferred entry of judgment or sentencing.

Sec. 3. (1) The sentence of probation shall include all of the following conditions:

(a) During the term of his or her probation, the probationer shall not violate any criminal law of this state, the United States, or another state or any ordinance of any municipality in this state or another state.

(b) During the term of his or her probation, the probationer shall not leave the state without the consent of the court granting his or her application for probation.

(c) The probationer shall report to the probation officer, either in person or in writing, monthly or as often as the probation officer requires. This subdivision does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

(d) If sentenced in circuit court, the probationer shall pay a probation supervision fee as prescribed in section 3c of this chapter.

(e) The probationer shall pay restitution to the victim of the defendant's course of conduct giving rise to the conviction or to the victim's estate as provided in chapter IX. An order for payment of restitution may be modified and shall be enforced as provided in chapter IX.

(f) The probationer shall pay an assessment ordered under section 5 of 1989 PA 196, MCL 780.905.

(g) The probationer shall pay the minimum state cost prescribed by section 1j of chapter IX.

(h) If the probationer is required to be registered under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736, the probationer shall comply with that act.

(2) As a condition of probation, the court may require the probationer to do 1 or more of the following:

(a) Be imprisoned in the county jail for not more than 12 months, at the time or intervals, which may be consecutive or nonconsecutive, within the probation as the court determines. However, the period of confinement shall not exceed the maximum period of imprisonment provided for the offense charged if the maximum period is less than 12 months. The court may permit day parole as authorized under 1962 PA 60, MCL 801.251 to 801.258. The court may permit a work or school release from jail. This subdivision does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

(b) Pay immediately or within the period of his or her probation a fine imposed when placed on probation.

(c) Pay costs pursuant to subsection (5).

(d) Pay any assessment ordered by the court other than an assessment described in subsection (1)(f).

(e) Engage in community service.

(f) Agree to pay by wage assignment any restitution, assessment, fine, or cost imposed by the court.

(g) Participate in inpatient or outpatient drug treatment or, beginning January 1, 2005, participate in a drug treatment court under chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082.

(h) Participate in mental health treatment.

(i) Participate in mental health or substance abuse counseling.

(j) Participate in a community corrections program.

(k) Be under house arrest.

(l) Be subject to electronic monitoring.

(m) Participate in a residential probation program.

(n) Satisfactorily complete a program of incarceration in a special alternative incarceration unit as provided in section 3b of this chapter.

(o) Be subject to conditions reasonably necessary for the protection of 1 or more named persons.

(p) Reimburse the county for expenses incurred by the county in connection with the conviction for which probation was ordered as provided in the prisoner reimbursement to the county act, 1984 PA 118, MCL 801.81 to 801.93.

(q) Complete his or her high school education or obtain the equivalency of a high school education in the form of a general education development (GED) certificate.

(3) The court may impose other lawful conditions of probation as the circumstances of the case require or warrant or as in its judgment are proper.

(4) If an order or amended order of probation contains a condition for the protection of 1 or more named persons as provided in subsection (2)(o), the court or a law enforcement agency within the court's jurisdiction shall enter the order or amended order into the law enforcement information network. If the court rescinds the order or amended order or the condition, the court shall remove the order or amended order or the condition from the law enforcement information network or notify that law enforcement agency and the law enforcement agency shall remove the order or amended order or the condition from the law enforcement information network.

(5) If the court requires the probationer to pay costs under subsection (2), the costs shall be limited to expenses specifically incurred in prosecuting the defendant or providing legal assistance to the defendant and supervision of the probationer.

(6) If the court imposes costs under subsection (2) as part of a sentence of probation, all of the following apply:

(a) The court shall not require a probationer to pay costs under subsection (2) unless the probationer is or will be able to pay them during the term of probation. In determining the amount and method of payment of costs under subsection (2), the court shall take into account the probationer's financial resources and the nature of the burden that payment of costs will impose, with due regard to his or her other obligations.

(b) A probationer who is required to pay costs under subsection (1)(g) or (2)(c) and who is not in willful default of the payment of the costs may petition the sentencing judge or his or her successor at any time for a remission of the payment of any unpaid portion of those costs. If the court determines that payment of the amount due will impose a manifest hardship on the probationer or his or her immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

(7) If a probationer is required to pay costs as part of a sentence of probation, the court may require payment to be made immediately or the court may provide for payment to be made within a specified period of time or in specified installments.

(8) If a probationer is ordered to pay costs as part of a sentence of probation, compliance with that order shall be a condition of probation. The court may revoke probation if the probationer fails to comply with the order and if the probationer has not made a good faith effort to comply with the order. In determining whether to revoke probation, the court shall consider the probationer's employment status, earning ability, and financial resources, the willfulness of the probationer's failure to pay, and any other special circumstances that may have a bearing on the probationer's ability to pay. The proceedings provided for in this subsection are in addition to those provided in section 4 of this chapter.

(9) If entry of judgment is deferred in the circuit court, the court shall require the individual to pay a supervision fee in the same manner as is prescribed for a delayed sentence under section 1(3) of this chapter, shall require the individual to pay the minimum state costs prescribed by section 1j of chapter IX, and may impose, as applicable, the conditions of probation described in subsections (1), (2), and (3).

(10) If sentencing is delayed or entry of judgment is deferred in the district court or in a municipal court, the court shall require the individual to pay the minimum state costs prescribed by section 1j of chapter IX and may impose, as applicable, the conditions of probation described in subsections (1), (2), and (3).

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17373;—Am. 1931, Act 308, Eff. Sept. 18, 1931;—CL 1948, 771.3;—Am. 1957, Act 72, Eff. Sept. 27, 1957;—Am. 1978, Act 77, Eff. Sept. 1, 1978;—Am. 1980, Act 514, Eff. Mar. 31, 1981;—Am. 1982, Act 137, Imd. Eff. Apr. 27, 1982;—Am. 1985, Act 89, Imd. Eff. July 10, 1985;—Am. 1988, Act 78, Eff. Oct. 1, 1988;—Am. 1989, Act 184, Eff. Oct. 1, 1989;—Am. 1993, Act 185, Eff. Oct. 1, 1993;—Am. 1993, Act 343, Eff. May 1, 1994;—Am. 1994, Act 286, Eff. Oct. 1, 1995;—Am. 1994, Act 445, Eff. Feb. 1, 1995;—Am. 1998, Act 449, Eff. Aug. 1, 1999;—Am. 1998, Act 520, Imd. Eff. Jan. 12, 1999;—Am. 2003, Act 101, Eff. Oct. 1, 2003;—Am. 2004, Act 116, Imd. Eff. May 26, 2004;—Am. 2004, Act 219, Eff. Jan. 1, 2005;—Am. 2004, Act 330, Imd. Eff. Sept. 23, 2004;—Am. 2006, Act 655, Imd. Eff. Jan. 9, 2007.

Compiler's note: Section 3 of Act 78 of 1988 provides: "This amendatory act shall take effect June 1, 1988." This section was amended by Act 181 of 1988 to read as follows: "This amendatory act shall take effect October 1, 1988."

Former law: See section 3 of Act 105 of 1913, being CL 1915, § 2031; and Act 203 of 1925.

771.3a Probation camp.

Sec. 3a. (1) A person under 22 years of age who is convicted of a crime in this state for which a sentence in a state prison may be imposed may be required under a probation order to spend not more than 1 year of the probation period, as the court directs, in a probation camp made available to the court by the department of corrections. Admission to a probation camp under this section shall be made only with the prior consent of the department of corrections. The department shall have custody of the probationer for the period the court directs. A probationer fleeing the department's custody may be pursued and recaptured as if the probationer had been regularly committed to a penal institution and had escaped from the institution. A violation by the probationer of the department's rules constitutes sufficient grounds for the court to revoke its probation order and to sentence the probationer for the offense for which he or she was originally convicted and placed on probation. This section does not restrict or limit the court's jurisdiction to place a person on probation in another facility suitable and available to the court. The expense of transporting a probationer to and from the probation camp shall be borne by the county from which the probationer was committed to the department of corrections.

(2) This section does not apply to a person placed on probation under sections 1(3) and 2(3) of this chapter or to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or

agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

History: Add. 1955, Act 154, Imd. Eff. June 7, 1955;—Am. 1958, Act 106, Eff. Sept. 13, 1958;—Am. 1978, Act 77, Eff. Sept. 1, 1978;—Am. 1988, Act 78, Eff. Oct. 1, 1988;—Am. 1998, Act 520, Imd. Eff. Jan. 12, 1999.

Compiler's note: Section 3 of Act 78 of 1988 provides: "This amendatory act shall take effect June 1, 1988." This section was amended by Act 181 of 1988 to read as follows: "This amendatory act shall take effect October 1, 1988."

771.3b Special alternative incarceration program.

Sec. 3b. (1) In addition to any other terms or conditions of probation provided for under this chapter, the court may require under a probation order that a person convicted of a crime, except a crime specified in subsection (17), for which a sentence in a state correctional facility may be imposed shall satisfactorily complete a program of incarceration in a special alternative incarceration unit, and a period of not less than 120 days of probation under intensive supervision. The special alternative incarceration program shall be established and operated by the department of corrections as provided in the special alternative incarceration act, 1988 PA 287, MCL 798.11 to 798.18. The court also may require the person to satisfactorily complete a local residential program of vocational training, education, and substance abuse treatment, pursuant to subsection (9) or (10).

(2) In order for a person to be placed in a special alternative incarceration program, the person shall meet all of the following requirements:

- (a) The person has never served a sentence of imprisonment in a state correctional facility.
- (b) The person would likely be sentenced to imprisonment in a state correctional facility.
- (c) The felony sentencing guidelines upper limit for the recommended minimum sentence for the person's offense is 12 months or more, as determined by the department. This subdivision does not apply in either of the following circumstances:
 - (i) The person's offense is not covered by the felony sentencing guidelines.
 - (ii) The reason for the person being considered for placement is that he or she violated the conditions of his or her probation.

(d) The person is physically able to participate in the special alternative incarceration program.

(e) The person does not appear to have any mental disability that would prevent participation in the special alternative incarceration program.

(3) Subsection (2)(b) and (c) do not prevent the department of corrections from entering into contracts with counties for participation in the county jail special alternative incarceration program. The county jail special alternative program is a program in which convicted felons who would have been sentenced to a county jail with a sentence of 6 to 12 months can participate.

(4) Before a court may place a person pursuant to this section, an initial investigation shall be completed by the probation officer. The initial investigation shall establish that the person meets the requirements of subsection (2)(a) and (b).

(5) After a person is placed in a special alternative incarceration program, the department shall establish that the person meets the requirements of subsection (2). If the person does not meet the requirements of subsection (2), the person shall be returned to the court for sentencing. The placement of a person in a special alternative incarceration program is conditioned upon the person meeting the requirements of subsection (2). If a person does not meet the requirements of subsection (2), the probation order is rescinded, and the person shall be sentenced in the manner provided by law.

(6) A person shall not be placed in a program of special alternative incarceration unless the person consents to the placement.

(7) In every case in which a person is placed in a special alternative incarceration program, the clerk of the sentencing court shall, within 5 working days after the placement, mail to the department of corrections a certified copy of the judgment of sentence and the presentence investigation report of the person being placed.

(8) Except as provided in subsections (9) to (12), a person shall be placed in a special alternative incarceration program for a period of not more than 120 days. If, during that period, the person misses more than 5 days of program participation due to medical excuse for illness or injury occurring after he or she was placed in the program, the period of placement shall be increased by the number of days missed, beginning with the sixth day of medical excuse, up to a maximum of 20 days. A medical excuse shall be verified by a physician's statement, a copy of which shall be provided to the sentencing court. A person who is medically unable to participate in the program for more than 25 days shall be returned to the court for sentencing pursuant to subsection (5).

(9) The order of probation under subsection (1) may require that a person who successfully completes a special alternative incarceration program also successfully complete an additional period of not more than 120 days of residential treatment in the local governmental jurisdiction from which the person was committed,

beginning immediately upon completion of the special alternative incarceration program, if the local unit of government has created a residential program providing vocational training, education, and substance abuse treatment, designed in whole or in part for persons who complete a program of special alternative incarceration.

(10) The order of probation under subsection (1) may authorize the department of corrections to require a person who successfully completes a special alternative incarceration program to also successfully complete an additional period of not more than 120 days of residential treatment in a program operated by the department of corrections pursuant to section 4(2) of the special alternative incarceration act, 1988 PA 287, MCL 798.14. A probationer sentenced pursuant to subsection (9) is not eligible for residential treatment pursuant to this subsection.

(11) An order of probation under subsection (1) that requires an additional period of residential treatment upon completion of the special alternative incarceration program shall be considered to be entered pursuant to subsection (9).

(12) A person who successfully completes a program of special alternative incarceration shall be placed on probation under intensive supervision for a period of not less than 120 days. The period of probation under intensive supervision shall begin upon the completion of the program of special alternative incarceration, unless the person has been ordered to complete an additional program of residential treatment as described in subsection (9) or (10), in which case the period of probation under intensive supervision shall begin upon completion of the program of residential treatment.

(13) Upon receiving a satisfactory report of performance in the program from the department of corrections, the court shall authorize the release of the person from confinement in the special alternative incarceration unit. The receipt of an unsatisfactory report shall be grounds for revocation of probation as would any other violation of a condition or term of probation.

(14) A term of special alternative incarceration shall be served in the manner provided in the special alternative incarceration act, 1988 PA 287, MCL 798.11 to 798.18.

(15) Except as provided in subsection (16), a person shall not be incarcerated in a special alternative incarceration unit more than once.

(16) If a person was placed in a special alternative incarceration program but was returned to the court for sentencing because of a medical condition existing at the time of the placement, the person may be placed again in a special alternative incarceration program after the medical condition is corrected.

(17) A person who is convicted of any of the following crimes shall not be eligible for placement in the special alternative incarceration program:

(a) A crime described in section 145c, 520b, 520c, 520d, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.145c, 750.520b, 750.520c, 750.520d, and 750.520g.

(b) Section 72, 73, or 75 of the Michigan penal code, 1931 PA 328, MCL 750.72, 750.73, and 750.75.

(c) An attempt to commit a crime described in subdivision (a) or (b).

History: Add. 1988, Act 286, Imd. Eff. Aug. 1, 1988;—Am. 1989, Act 304, Imd. Eff. Jan. 3, 1990;—Am. 1992, Act 21, Imd. Eff. Mar. 19, 1992;—Am. 1994, Act 426, Imd. Eff. Jan. 6, 1995;—Am. 1998, Act 49, Imd. Eff. Mar. 30, 1998.

771.3c Probation supervision fee; enforcement of probation oversight fee; person subject to other obligations arising out of criminal proceeding; applicability of section to certain juveniles.

Sec. 3c. (1) The circuit court shall include in each order of probation for a defendant convicted of a crime that the department of corrections shall collect a probation supervision fee of not more than \$135.00 multiplied by the number of months of probation ordered, but not more than 60 months. The fee is payable when the probation order is entered, but the fee may be paid in monthly installments if the court approves installment payments for that probationer. In determining the amount of the fee, the court shall consider the probationer's projected income and financial resources. The court shall use the following table of projected monthly income in determining the amount of the fee to be ordered:

<u>Projected Monthly Income</u>	<u>Amount of Fee</u>
\$ 0-249.99	\$ 0.00
\$ 250.00-499.99	\$10.00
\$ 500.00-749.99	\$25.00
\$ 750.00-999.99	\$40.00
\$ 1,000.00 or more	5% of projected monthly income, but not more than \$135.00

The court may order a higher amount than indicated by the table, up to the maximum of \$135.00 multiplied

by the number of months of probation ordered, but not more than 60 months, if the court determines that the probationer has sufficient assets or other financial resources to warrant the higher amount. If the court orders a higher amount, the amount and the reasons for ordering that amount shall be stated in the court order. The fee shall be collected as provided in section 25a of the corrections code of 1953, 1953 PA 232, MCL 791.225a. A person shall not be subject to more than 1 supervision fee at the same time. If a supervision fee is ordered for a person for any month or months during which that person already is subject to a supervision fee, the court shall waive the fee having the shorter remaining duration.

(2) If a person who is subject to a probation supervision fee is also subject to any combination of fines, costs, restitution orders, assessments, or payments arising out of the same criminal proceeding, the allocation of money collected for those obligations shall be as otherwise provided in section 22 of chapter XV.

(3) This section does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

History: Add. 1989, Act 184, Eff. Oct. 1, 1989;—Am. 1993, Act 185, Eff. Oct. 1, 1993;—Am. 1998, Act 520, Imd. Eff. Jan. 12, 1999;—Am. 2002, Act 483, Eff. Oct. 1, 2002.

771.4 Legislative intent; revocation of probation; procedure; sentence; section inapplicable to certain juveniles.

Sec. 4. It is the intent of the legislature that the granting of probation is a matter of grace conferring no vested right to its continuance. If during the probation period the sentencing court determines that the probationer is likely again to engage in an offensive or criminal course of conduct or that the public good requires revocation of probation, the court may revoke probation. All probation orders are revocable in any manner the court that imposed probation considers applicable either for a violation or attempted violation of a probation condition or for any other type of antisocial conduct or action on the probationer's part for which the court determines that revocation is proper in the public interest. Hearings on the revocation shall be summary and informal and not subject to the rules of evidence or of pleadings applicable in criminal trials. In its probation order or by general rule, the court may provide for the apprehension, detention, and confinement of a probationer accused of violating a probation condition or conduct inconsistent with the public good. The method of hearing and presentation of charges are within the court's discretion, except that the probationer is entitled to a written copy of the charges constituting the claim that he or she violated probation and to a probation revocation hearing. The court may investigate and enter a disposition of the probationer as the court determines best serves the public interest. If a probation order is revoked, the court may sentence the probationer in the same manner and to the same penalty as the court might have done if the probation order had never been made. This section does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17374;—Am. 1947, Act 246, Imd. Eff. June 20, 1947;—CL 1948, 771.4;—Am. 1988, Act 78, Eff. Oct. 1, 1988;—Am. 1998, Act 520, Imd. Eff. Jan. 12, 1999.

Compiler's note: Section 3 of Act 78 of 1988 provides: "This amendatory act shall take effect June 1, 1988." This section was amended by Act 181 of 1988 to read as follows: "This amendatory act shall take effect October 1, 1988."

Former law: See section 4 of Act 105 of 1913, being CL 1915, § 2032; and Act 203 of 1925.

771.4a Violation of sex offenders registration act; probation revocation.

Sec. 4a. The court shall revoke probation pursuant to section 4 of this chapter if the individual willfully violates the sex offenders registration act.

History: Add. 1994, Act 286, Eff. Oct. 1, 1995.

771.5 Termination of probation period; report; discharge of probationer from supervision; suspension of sentence; extension of probation; section inapplicable to certain juveniles.

Sec. 5. (1) When the probation period terminates, the probation officer shall report that fact and the probationer's conduct during the probation period to the court. Upon receiving the report, the court may discharge the probationer from further supervision and enter a judgment of suspended sentence or extend the probation period as the circumstances require, so long as the maximum probation period is not exceeded.

(2) This section does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17375;—CL 1948, 771.5;—Am. 1988, Act 78, Eff. Oct. 1, 1988;—Am. 1998,

Act 520, Imd. Eff. Jan. 12, 1999.

Compiler's note: Section 3 of Act 78 of 1988 provides: "This amendatory act shall take effect June 1, 1988." This section was amended by Act 181 of 1988 to read as follows: "This amendatory act shall take effect October 1, 1988."

Former law: See section 5 of Act 105 of 1913, being CL 1915, § 2033.

771.6 Probation; record of discharge.

Sec. 6. When a probationer is discharged upon the expiration of the probation period, or upon its earlier termination by order of the court, entry of the discharge shall be made in the records of the court, and the probationer shall be entitled to a certified copy thereof.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17376;—CL 1948, 771.6.

Former law: See section 6 of Act 105 of 1913, being CL 1915, § 2034.

771.7 Revoking probation of juvenile for conviction of felony or misdemeanor; commitment of juvenile to department of corrections; violation of probation; order.

Sec. 7. (1) If the court finds that a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, violated probation by being convicted of a felony or a misdemeanor punishable by imprisonment for more than 1 year, the court shall revoke probation and order the juvenile committed to the department of corrections for a term of years that does not exceed the penalty that could have been imposed for the offense for which the juvenile was originally convicted and placed on probation. The court shall grant credit against the sentence for the period of time the juvenile served on probation.

(2) If the court finds that a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, violated probation other than as provided in subsection (1), the court may order the juvenile committed to the department of corrections or may order any of the following for the juvenile:

- (a) A change of placement.
- (b) Community service.
- (c) Substance abuse counseling.
- (d) Mental health counseling.
- (e) Participation in a vocational-technical education program.
- (f) Incarceration in a county jail for not more than 30 days. If a juvenile is under 17 years of age, the juvenile shall be placed in a room or ward out of sight and sound from adult prisoners.
- (g) Other participation or performance as the court considers necessary.

History: Add. 1988, Act 78, Eff. Oct. 1, 1988;—Am. 1993, Act 343, Eff. May 1, 1994;—Am. 1996, Act 247, Eff. Jan. 1, 1997;—Am. 1998, Act 520, Imd. Eff. Jan. 12, 1999.

Compiler's note: Former MCL 771.7, which pertained to discharge of accused, was repealed by Act 81 of 1979, Eff. Dec. 31, 1979.

Section 3 of Act 78 of 1988 provides: "This amendatory act shall take effect June 1, 1988." This section was amended by Act 181 of 1988 to read as follows: "This amendatory act shall take effect October 1, 1988."

771.8-771.13 Repealed. 1979, Act 81, Eff. Dec. 31, 1979.

Compiler's note: The repealed sections pertained to payment of costs, appeal to circuit court, discharge of person, and recognizance.

771.14 Presentence investigation report; contents; information exempted from disclosure; amendment or alteration; review of report; challenge; findings; copies.

Sec. 14. (1) Before the court sentences a person charged with a felony or a person who is a licensee or registrant under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, as described in section 1(11) of chapter IX, and, if directed by the court, in any other case in which a person is charged with a misdemeanor within the jurisdiction of the court, the probation officer shall inquire into the antecedents, character, and circumstances of the person, and shall report in writing to the court.

(2) A presentence investigation report prepared under subsection (1) shall include all of the following:

- (a) An evaluation of and a prognosis for the person's adjustment in the community based on factual information contained in the report.
- (b) If requested by a victim, any written impact statement submitted by the victim under the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834.
- (c) A specific written recommendation for disposition based on the evaluation and other information as prescribed by the assistant director of the department of corrections in charge of probation.
- (d) A statement prepared by the prosecuting attorney as to whether consecutive sentencing is required or authorized by law.

(e) For a person to be sentenced under the sentencing guidelines set forth in chapter XVII, all of the following:

(i) For each conviction for which a consecutive sentence is authorized or required, the sentence grid in part 6 of chapter XVII that contains the recommended minimum sentence range.

(ii) Unless otherwise provided in subparagraph (i), for each crime having the highest crime class, the sentence grid in part 6 of chapter XVII that contains the recommended minimum sentence range.

(iii) Unless otherwise provided in subparagraph (i), the computation that determines the recommended minimum sentence range for the crime having the highest crime class.

(iv) A specific statement as to the applicability of intermediate sanctions, as defined in section 31 of chapter IX.

(v) The recommended sentence.

(f) If a person is to be sentenced for a felony or for a misdemeanor involving the illegal delivery, possession, or use of alcohol or a controlled substance, a statement that the person is licensed or registered under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, if applicable.

(g) Diagnostic opinions that are available and not exempted from disclosure under subsection (3).

(3) The court may exempt from disclosure in the presentence investigation report information or a diagnostic opinion that might seriously disrupt a program of rehabilitation or sources of information obtained on a promise of confidentiality. If a part of the presentence investigation report is not disclosed, the court shall state on the record the reasons for its action and inform the defendant and his or her attorney that information has not been disclosed. The action of the court in exempting information from disclosure is subject to appellate review. Information or a diagnostic opinion exempted from disclosure pursuant to this subsection shall be specifically noted in the presentence investigation report.

(4) If a prepared presentence investigation report is amended or altered before sentencing by the supervisor of the probation officer who prepared the report or by any other person who has the authority to amend or alter a presentence investigation report, the probation officer may request that the court strike his or her name from the report and the court shall comply with that request.

(5) The court shall permit the prosecutor, the defendant's attorney, and the defendant to review the presentence investigation report before sentencing.

(6) At the time of sentencing, either party may challenge, on the record, the accuracy or relevancy of any information contained in the presentence investigation report. The court may order an adjournment to permit the parties to prepare a challenge or a response to a challenge. If the court finds on the record that the challenged information is inaccurate or irrelevant, that finding shall be made a part of the record, the presentence investigation report shall be amended, and the inaccurate or irrelevant information shall be stricken accordingly before the report is transmitted to the department of corrections.

(7) On appeal, the defendant's attorney, or the defendant if proceeding pro se, shall be provided with a copy of the presentence investigation report and any attachments to the report with the exception of any information exempted from disclosure by the court under subsection (3).

(8) If the person is committed to a state penal institution, a copy or amended copy of the presentence investigation report and, if a psychiatric examination of the person has been made for the court, a copy of the psychiatric report shall accompany the commitment papers. If the person is sentenced by fine or imprisonment or placed on probation or other disposition of his or her case is made by the court, a copy or amended copy of the presentence investigation report, including a psychiatric examination report made in the case, shall be filed with the department of corrections.

(9) A prisoner under the jurisdiction of the department of corrections shall be provided with a copy of any presentence investigation report in the department's possession about that prisoner, except for information exempted from disclosure under subsection (3), not less than 30 days before a parole interview is conducted under section 35 of 1953 PA 232, MCL 791.235.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17384;—Am. 1931, Act 308, Eff. Sept. 18, 1931;—Am. 1937, Act 256, Imd. Eff. July 22, 1937;—Am. 1939, Act 286, Eff. Sept. 29, 1939;—CL 1948, 771.14;—Am. 1979, Act 81, Eff. Dec. 31, 1979;—Am. 1982, Act 61, Eff. Mar. 30, 1983;—Am. 1985, Act 88, Imd. Eff. July 10, 1985;—Am. 1993, Act 85, Eff. Apr. 1, 1994;—Am. 1994, Act 445, Eff. Feb. 1, 1995;—Am. 1998, Act 317, Eff. Dec. 15, 1998;—Am. 2000, Act 279, Eff. Oct. 1, 2000.

Constitutionality: A postconviction presentence psychiatric examination of a defendant, ordered by the trial court in the presence of defense counsel without objection and conducted two weeks later outside the presence of counsel, which was referred to by the trial court in imposing sentence, did not violate the defendant's Fifth Amendment right against self-incrimination or his Sixth Amendment right to counsel. *People v. Wright*, 431 Mich. 282, 430 N.W.2d 133 (1988).

Compiler's note: Section 3 of Act 210 of 1979 provides:

"The provisions of Act Nos. 81 and 89 of the Public Acts of 1979 shall not take effect in a county with a population of 1.5 million or more prior to a majority vote of the elected members of the county's board of commissioners to place the question of the creation of a charter commission under the terms of enacted Senate Bill No. 652 before the county electorate. Subsequent to the above action by the
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board of commissioners, funds appropriated for probation services for a county with a population of 1.5 million or more shall become immediately effective, and shall be retroactive to the extent of the funds provided.”

Section 4 of Act 210 of 1979 provides:

“Implementation of Act Nos. 81 and 89 of the Public Acts of 1979 shall not be effective in counties which refuse to provide probation support costs as required in those acts.”

Former law: See section 14 of Act 105 of 1913, being CL 1915, § 2042.

771.14a Inquiry and report before sentencing juvenile; disclosures; exemptions; review of report; challenges or responses to challenges; finding; amendment of report; copy of report and attachments; report additional to presentence investigation report.

Sec. 14a. (1) Before the court sentences a juvenile under section 1(3) or (4) of chapter IX, the family independence agency or county juvenile agency, as applicable, shall inquire into the juvenile's antecedents, character, and circumstances and shall report in writing to the court as provided in section 4 of the juvenile facilities act, 1988 PA 73, MCL 803.224.

(2) The court may exempt from disclosure in a report under this section information or a diagnostic opinion that might seriously disrupt a program of rehabilitation or sources of information obtained on a promise of confidentiality. If a part of the report is not disclosed, the court shall state on the record the reasons for its action and inform the juvenile and his or her attorney that information has not been disclosed. The action of the court in exempting information from disclosure is subject to appellate review. Information or a diagnostic opinion exempted from disclosure under this subsection shall be specifically noted in the report.

(3) The court shall permit the prosecutor, the juvenile's attorney, and the juvenile to review the report before sentencing.

(4) At the time of sentencing, either party may challenge on the record the accuracy or relevancy of any information contained in the report. The court may order an adjournment to permit the parties to prepare a challenge or a response to a challenge. If the court finds that the challenged information is inaccurate or irrelevant, that finding shall be made a part of the record and the report shall be amended by striking the inaccurate or irrelevant information.

(5) The juvenile and, on appeal, the juvenile's attorney shall be provided with a copy of the report and any attachments to the report, with the exception of any information exempted from disclosure under subsection (2).

(6) If the juvenile is committed to a state penal institution or is placed on probation and committed to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, a copy of the report and any attachments to it shall accompany the commitment papers. If the juvenile is sentenced by fine or imprisonment or placed on probation but not committed to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, a copy of the report and any attachments to it shall be filed with the department of corrections.

(7) A report under this section is in addition to, and not in lieu of, a presentence investigation report required by section 14 of this chapter.

History: Add. 1988, Act 78, Eff. Oct. 1, 1988;—Am. 1998, Act 520, Imd. Eff. Jan. 12, 1999.

Compiler's note: Section 3 of Act 78 of 1988 provides: “This amendatory act shall take effect June 1, 1988.” This section was amended by Act 181 of 1988 to read as follows: “This amendatory act shall take effect October 1, 1988.”

771.15-771.24 Repealed. 1979, Act 81, Eff. Dec. 31, 1979.

Compiler's note: The repealed sections pertained to probation officers.